IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1963 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHARATKUMAR CHHAGANLAL JAYSWAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1963 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR HH PATEL Ld. AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 17/06/2002

ORAL JUDGEMENT

Heard learned counsel Mr. Prajapati for the petitioner. The petitioner has challenged the legality and validity of the order of detention dated 30.1.2002 Annexure-A, passed by the detaining authority namely

District Magistrate, Ahmedabad invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

According to the petitioner, the order under challenged dated 30.1.2002 issued by the respondent no. 2, the petitioner has been detained under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. It is the say of the detaining authority that the petitioner is acting in the manner prejudicial to maintenance of supplies of essential commodity. The order is challenged on the number of grounds but during the course of oral submissions, Mr. Prajapati has mainly focussed oral submissions on the grounds (i) & (j) mentioned in the memo of petition. According to Mr. Prajapati, petitioner was not supplied with the releant material namely the basic documents referred to in the grounds of detention conveyed to the detenu. The detaining authority was under a statutory obligation to supply all relevant material within 5 days from the date of detention. Undisputedly, the petitioner was detained on 30.1.2002 and in affidavit in reply filed by the State, it has been accepted that the relevant document demanded by the detenu were supplied on 7.2.2002 i.e. after a lapse of 5 days. Irrespective of the demand, it is the obligation on the part of the State to supply all relevant documents. Though the respondent-State tried to explain its position in para-6,7 & 8 of the affidavit in reply, but it does not carry the case of the State any further, but on the contrary, it strengthen the case of the petitioner. Mr Prajapati has rightly placed reliance on the decision reported in AIR 1982 SC p. 696 in the case of Mohd. Zakir vs. Delhi Administration and Ors. where the Apex Court has held that:

> "it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

In the present case, within first five days, all the documents were not supplied to the detenu, so he can legitimately agigate before this court that he was not offered an opportunity of effective representation.

I have considered the affidavit in reply filed by the Union of India and considered the submissions made by

Ms. Davawala learned Central Govt. Standing Counsel. The reply filed by the Union of India is a formal reply. The question going to the root of the merits of the matter is divulged from the affidavit filed by the State of Gujarat. So, it is not required to deal with the affidavit filed by the Union of India on merits.

In the result, this petition is allowed. The impugned order of detention dated 30.1.2002 is quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)
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